IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Date of Decision: 9th December,1996.

Special Civil Application No. 7976 of 1995

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Dr. Jayantilal Mohanlal Desai
& Others. :Petitioners.

Versus

State of Gujarat & Others. :Respondents.

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Shri D.D. Vyas, Advocate for the petitioners.
Ms. Parmar, A.G.P., for respondent No.1.
Smt. K.A. Mehta, Advocate for respondents Nos. 2,3 & 4.

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Coram: H.R. Shelat,J.
(9-12-1996)

JUDGMENT:

The petitioners have filed this writ petition under Article 227 of the Constitution of India, with a prayer to the effect that this Court may be pleased to issue a writ of certiorari or any other appropriate writ, or an order quashing the impugned order dated 5th January

1994 passed by the then Dy. Collector, Navsari, in C.T.S. Appeal No. 12 of 1993-94, the copy of which is annexed as Annexure D to this petition. The question that falls for consideration is whether the owner of the neighbouring property can as of a right claim the opportunity of being heard before the City Survey Officer, or the authority in appeal who is to pass the order qua the right, title, interest, possession, use and occupation, sketch, area, number, tenure, liability, nature, encumbrance, measurement etc., of a property (land).

2. The petitioners are the owners and in possession of the property bearing Rev. Survey No. 226/1, the City Survey Number of which is 4043 admeasuring 644 sq.mts. situated in Ashanagar, behind Garda College Campus, Ward No.6 at Navsari in Valsad District. They purchased this property on 20-8-1963 from Naranjibhai Bhimjibhai Patel. The petitioners thereafter constructed the house thereon leaving the margin land open. The land on which they constructed the house is a `C' tenure land. To the South of their house, there is an open land, i.e. a plot bearing Tika No. 56, Rev.S. No. 266 and S. No. 3054 admeasuring 412 sq.mts. It is also the `C' tenure land, whereon 100% construction is not permitted,margin land has to be kept open. Formerly, it might be belonging to Desai Mancherji Palanji, Bejarji Kharshedji and Ardeshar Manekji. After the independence Naranbhai Bhikhubhai Patel became the owner. He later on sold the same to Govindji Hiralal Patel, the father of respondents Nos. 2 & 3. The respondent No.2 relinquished his right, title and interest making respondent No.3 to be the sole owner of that land. The respondent No.3 on 20-9-95 sold the land to the respondent No.4, the Co-op.Housing Society, who is to construct the flats. During the reign of erstwhile Baroda State, the land now belonging to respondent No.4 was `A' tenure land and so 100% construction was possible. In 1914 A.D., City Survey enquiry was held. At that time the land was found to be `A' tenure land. In 1974 when again City Survey inquiry was held, the tenure of the land came to be changed from `A' tenure to `C' tenure passing necessary order on 31-7-74 so as to promote worthier and healthier housing schemes for better living. Having come to know that tenure of the land was changed, the respondent No.3 preferred the appeal, before the Dy. Collector in the year 1993-94, about 20 years after the resolution-cum-order dated 31-7-74 passed by the City Survey Officer, for getting the tenure of the land changed from `C' to `A' tenure, alleging that it was the order passed without any authority, and the then owner

Govindji Hiralal Patel was also not heard, etc. Placing reliance on G.R. dated 3-1-1958 and probably on Para 127 of the City Survey Manual, as well as Para 108(5)(6) of the City Survey Manual, the Dy.Collector allowed the appeal and on 5-1-94 ordered to convert the land from `C' tenure to `A' tenure. The petitioners could know that respondent No.3 had filed the appeal or was likely to file the appeal. They therefore on 21-10-93 tendered the application requesting the Dy. Collector to grant them the opportunity of being heard before any order is passed. After passing the impugned order on 5-1-94, the Dy. Collector rejected the application of the petitioners on 11-1-1994. The petitioners then knew that when the land was converted into `A' tenure land, the respondent No.4 will be able to use 100 % of the land for the construction, they will not have to keep the margin land open to sky, as a result several problems would arise and the construction of the flats or dwelling blocks of the respondent No.4 would certainly be touching to their compound wall leaving no land in between. They also knew that as per their apprehension the Nagarpalika of Navsari had granted the permission to construct. The petitioners therefore filed the appeal before the Collector, Valsad against the permission to construct granted by the Nagarpalika joining the Dy. Collector as one of the parties. They also filed this petition on 15-9-1995 challenging the legality and validity of the impugned order on the ground that the opportunity of being heard was not given to them.

3. In democratic State,rule of law cannot be divorced. In our democratic system, rule of law is adopted and the same is supreme. No authority can therefore pass the order capriciously or dehors the law. Any order passed without following procedure and principle of natural justice is really the negation of the rule of law resulting into civil consequences affecting the rights of a person. The petitioners were not given the opportunity to submit their say; consequently their rights qua their property were jeopardised. Making such submission, the learned advocate for the petitioners urged to set aside the impugned order and issue appropriate direction.

4. The authority whether judicial or quasi-judicial who has to adjudicate must adhere to the principles of natural justice and must give a reasonable opportunity of being heard to the person who is interested, or likely to be affected by the order to be passed, or against whom the order is sought. Many are under the belief that alike in U.K. and U.S.A. the administrative authority

is not bound to give the opportunity to submit if there is no statutory provision, as in that case it is not regarded as a sine qua non of natural justice. In short, the person is not entitled to the opportunity of being heard in administrative matter in the absence of conferment of the right by the Statute, but such belief is not congruous with law. In appeal, examining the merits of the order passed or decision taken by City Survey Officer, necessary order is passed which is the quasi-judicial act, and so the principle of audi alteram partem even if the same being not specifically covered in Statute will come into play. Even if it is considered to be the administrative act, the doctrine of natural justice must be held to be applicable only if it involves civil consequences, because in every administrative order principle of natural justice would not be applicable and those who are likely to be prejudicially affected should be given the opportunity of being heard so as to have fairness and check insidiousness, or collusion or arbitrariness or unreasonableness, capriciousness or irregularity or unjust exercise of powers or injury to others. Now the question that arises is whether the petitioners (though they cannot claim easement right) have a right to claim the opportunity of being heard. The answer to the question whether their interest is prejudicially affected is the decisive factor.

5. Urbanization has come to fore for various reasons and so cities are becoming crowded. To check the evils or bad effects of urbanisation, rules are framed or certain standards in all the fields are adopted or expected, and lands are also categorised. Those rules or standards are required to be kept in mind. Within available resources society and individual have a right of adequate, if not better living system, attune with rules of health and modernization which is the off-spring of a right to life guaranteed in the Constitution. By the march of science, notions and rights get changed or take a new shape, and some times present are waived, or ignored being obsoluscent and new are found imperative for adequate living. The authority therefore cannot shut its eyes towards new right or standards or system the society or State is adopting for providing and encouraging adequate living. Its order must be compatible with the standard or system adopted. Hence when individual right or matter is likely to be linked with the group rights or likely to affect the community-life, opportunity of being heard to the concerned persons has to be given either by giving notice individually or issuing public notice.

6. The persons purchase land and erect the dwelling houses in a particular locality finding the same to be suitable qua decent life, health, multi-purpose utility, convenience and comforts and uniform system; and more to this certain rules made for adequate living in the locality or town or city. If by administrative act or by any order to be passed in any proceeding is likely to affect local set up or system of life or likely to run counter to the uniformity for comforts, convenience and adequate living, notice to the concerned parties is necessary. The petitioners and others in the locality following and accepting the rules suitable to their life style preferred to have their residence. During the course of hearing, it was made clear that in the locality where land in question is situated, virtually all the plots are categorised as `C' tenure land and so whoever desires to build residential blocks or units has to leave the margin land open because building rules mandate so which is not the case where `A' tenure land is to be used for erecting residential units. By the order in question, therefore, their right to adequate living free from close-knit is likely to be affected. The petitioners had therefore a right to claim opportunity to submit. As the same is not given, the impugned order is required to be struck down. Even on other counts also, it is not maintainable.

7. Even when administrative order is passed, the reasons thereof should be given so that in case of its challenge the same can well be tested on merits on judicial anvil. In the case on hand, it is not stated why after 20 years the appeal was entertained and what was well-set in the locality was disturbed. It is also not ascertained whether in fact the father of the respondent No.3 was at the time of former city survey inquiry was given notice and heard or not. There is nothing indicating that standards accepted to check the evils or odds of urbanisation or environmental hazards were borne in mind. To provide adequate living system and maintenance of the standard thereof, Town Planning Act and alike other Acts are enacted. To be in tune with such adequate system, it seems formerly lands were converted from `A' tenure to `C' tenure in 1973 AD; and such object is not borne in mind. Further why from `A' tenure to `C' tenure the land was converted at the time of former inquiry, and what was then the good cause to restore the nature that stood during the reign of the then princely State of Baroda is not at all dealt with, and conveniently the object to promote adequate living system is ignored. The order in question therefore cannot be said to be well-reasoned, the same on that

count requires to be struck-down.

8. In one's own support, the Deputy Collector has placed reliance on the Government Resolution dated 3-1-1958 of the then bilingual Bombay State, the copy of which is produced at Annexure `G'. It does not command the authority to convert the tenure of land. It is issued to confer and regulate the occupancy of the land, levy of occupancy charges, and provide security to the tenure of the land, i.e., house-sites formerly under the reign of the then princely State, and after Independence, merged in the then Bombay State. The same is certainly not for converting the tenure of the land, which can be done under the law applicable and also undergoing necessary formalities. The reliance is erroneously placed and order that is passed on that base is nothing but capricious exercise of powers.

9. In view of Section 205 of the Bombay Land Revenue Code, the appeal before the Deputy Collector against the order of the City Survey Officer is required to be preferred within the period of 60 days. The order converting the land from `A' tenure to `C' tenure challenged in appeal before Deputy Collector was passed on 31-7-74 when City Survey Officer held inquiry. Thereafter in 1993, the appeal came to be filed. There is nothing on record indicating what was the good cause to admit the appeal, and whether delay u/s. 206 Bombay Land Revenue Code was condoned. Of course, no appeal against admission of appeal after the expiry of the period of limitation is competent in law, and therefore authority admitting the appeal has to assign good cause so that under supervisory jurisdiction under the Constitution, the High Court can have the adequate scope to test it, when group interest is involved. This Court does not have anything to examine the order qua collusion etc., when condonation is assumed.

10. It was contended on behalf of the respondents that in view of Para 106 of City Survey Manual, it was open to the respondent to file appeal at any time even after several years. It may be stated that the provision of Manual cannot override the provision of Bombay Land Revenue Code. Para 106 therefore cannot override Section 205 of the Bombay Land Revenue Code. In the alternative also, the contention cannot be accepted. Para 106 would come into play for filing appeal at any time without the rider of Section 205 if before passing the order procedural formalities or fundamental rules relating to procedure are ignored or set at naught. The order under challenge does not indicate that formerly by City Survey

Officer procedural formalities were set at naught. There is no application of mind in this regard and mechanically what has been alleged by respondent is accepted which amounts to non-application of mind and discarding justness, fairness and reasonableness.

10.A The impugned order came to be passed by the Deputy Collector at Navsari on 5th January 1994. The petitioner's request to grant opportunity to submit was then turned down on 11th January 1994 which was communicated to the petitioner. The petitioner then filed this petition on 15th September 1995. It is, therefore, contended on behalf of the opponents that the petition is filed late by one year, eight months and five days, and such inordinate delay was fatal to the petition. On that count, namely delay, latches and acquiescence, therefore the petition was liable to be rejected.

10-B. Although Articles 226 & 227 of the Constitution of India do not fix any particular period of limitation, the party wanting to claim relief must, therefore, come before the High Court as expeditiously as possible. It is for the Court to consider in each case having regards to facts and circumstances of the case, whether there is gross delay in presenting the petition. There can be no hard and fast rule, or no mathematical formula laying down the period within which the remedy must be exhausted, beyond which, delay would be considered fatal to the exercise of the discretion in favour of the petitioner. However, ordinarily if the petition is filed within the period of 8 to 10 months after the cause of action arises, the same should be held to have been filed within reasonable time. Accordingly, if this petition is considered, one would be inclined to believe that it is filed late by one year and on that count it must fail, but petition on that count cannot be dismissed. If the petition is admitted, it cannot be thrown off on the technical plea of delay or latches or acquiescence. Once the petition is admitted, ordinarily it should be presumed that even if there is a delay, the same is condoned of course subject to the plea that may be raised by the other side on his appearance before the Court and in that case court will have to consider the question about delay and decide in whose favour exercise of the discretion must tilt. If the plea is not raised by the otherside, but the contention about delay, latches or acquiescence is raised at the time of submitting arguments, the same cannot be countenanced because in that case, the other side will have no chance to explain

the delay by filing the affidavit.

10-C. In the case on hand, no plea regarding delay, latches or acquiescence has been raised in the affidavit filed by the respondents and for the first time at the time of making submissions the contention is raised, and therefore the petitioner has lost the opportunity to explain the delay by filing the counter-affidavit. When that is so, the petition cannot be thrown overboard on the technical plea of delay, latches and acquiescence.

10-D. It should be borne in mind that the doctrine of acquiescence, delay or latches can be invoked if it is found that assertion of a right by the petitioner has caused prejudice to the opposite party because of late filing of the petition. In other words, if there is belated or stale claims, i.e. there is gross or inordinate delay in filing the petition, the delay would gain importance if entertaining the petition and grant of the relief would have the result of unsettling settled state of affairs and order of things in existence for a long time. If the opposite party is not likely to suffer any injury, delay will loose its vigour. In the case on hand, the land now in possession of respondent No.4 has to be utilized for constructing the flats, or dwelling units. Yet the flats are not constructed and land is not virtually used for any other purpose. If the petition is, therefore, entertained and decided the opponents would not suffer any injury; and nothing would be upset and no prejudice is likely to be caused. At the most they will have to modify or alter their plan which cannot be termed injury or prejudice in the eye of law. If the respondent No.4 has purchased the land from respondent No.3 knowing about the tenure-order in question, the petition cannot be thrown overboard on the ground that owing to late filing of petition, expected benefits thereof will be jeopardised and upset the set-up because no one can escape of latent, patent or inherent infirmities of the act, order or transaction later on coming to light on adjudication having erosive effect on the good aspects thereof as he can be deemed to have accepted the otherside of the transaction. Soon he came to know about the plan to construct, the petitioner approached the Nagarpalika, Navsari, so as to resist the grant of the permission to construct, but on the same being granted, the petitioner challenged the same before the Collector, Valsad, filing appropriate application and also filed this petition. So it would not amount to acquiescence. Further the delay, in the alternative, cannot be considered gross. In view of the matter, this petition cannot be held bad because of the doctrine of

acquiescence, delay and latches. No other submissions are advanced.

11. I am, therefore, of the view that injustice has been done to the petitioners. The petition is, therefore, allowed, and the order dated 5-1-1994 passed by the Dy. Collector is set aside. The Dy. Collector shall now consider the appeal afresh hearing the concerned and the petitioners, and shall pass appropriate order. No costs in the circumstances of the case. Rule is made absolute.
